

California Regional Water Quality Control Board
Santa Ana Region

January 22, 2004

ITEM: 10

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – James Lotito, dba Mill Creek Cattle Company, 1874 Mentone Boulevard, Mentone, San Bernardino County, APN 298-111-21, APN 298-111-18 and part of 19

DISCUSSION:

James Lotito is the owner of the Mill Creek Cattle Company restaurant located in Mentone. Currently there exists a restaurant, gift shop and 2 single-family homes that are served by two onsite septic tank-subsurface disposal systems. Mr. Lotito proposed to construct a 100-seat banquet room (including kitchen and restrooms) addition to the existing restaurant. To accommodate the additional wastewater flows that would be generated upon implementation of this proposal, Mr. Lotito removed one 750-gallon septic tank and replaced it with a 3,000-gallon septic tank. Mr. Lotito did not obtain approval from either Regional Board staff or San Bernardino County Environmental Health for this septic tank replacement. On August 25, 2003, Bob Graham of G & G Designs (consultant for Mr. Lotito) visited the Regional Board office at the request of San Bernardino County Environmental Health, to request clearance for the replacement septic system and for the proposed banquet room. An additional 29 fixture units (FU) were proposed for the banquet room expansion. As described below, this proposal was later revised to exclude the added fixture units. However, use of the banquet room would result in additional wastewater flows to the septic systems. The lot size is approximately 1.15 acres (49,928 sq ft). There is no sewer currently available to serve the lot. On September 2, 2003, staff sent a letter (Attachment "1") requesting additional information regarding the proposed project.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal system use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments. The MLSRs also specify the circumstances under which replacement of existing septic tank-subsurface disposal systems at commercial and

industrial developments are exempt from the MLSRs. Specifically, replacement of existing systems is exempt only if it is necessary to bring the system up to code as required by the local health care agency and/or the appropriate building and safety department. Replacement of the septic tank at the Mill Creek Cattle Company restaurant was not occasioned by the need to bring the system up to code. Thus, this commercial development is a “new” development subject to the MLSRs.

The MLSRs state that for new industrial/commercial developments utilizing septic tank-subsurface disposal systems, the wastewater flow for each one-half acre gross area of land may not exceed that from a three-bedroom, two-bathroom single-family dwelling unit. For determining compliance with this criterion, a flow rate of 300 gallons per day shall be considered as the flow equivalent to that from a 3-bedroom, 2-bathroom single-family dwelling. On September 25, 2003, Mr. Lotito submitted copies of three of his water bills to show current water usage at the site (Attachment “2”). These water bills showed water usage for the following periods:

November 20, 2002 through January 20, 2003 = 2,105 gallons per day (gpd),
January 20, 2003 to March 24, 2003, 1,496 gpd, and
March 24, 2003 to May 19, 2003, = 1,790 gpd.

The maximum permissible wastewater discharge from the proposed 1.15-acre project is approximately 690 gallons per day, which is equivalent to 46 fixture units. Although not all water used at the facility would be discharged to the subsurface disposal system, it is likely that, wastewater flow at the restaurant would substantially exceed the allowable amount. Based on the information submitted, there are a total of 70 fixture units at the existing restaurant and two homes on site.

On October 29, 2003, Regional Board and San Bernardino County staff met with Mr. Lotito and Mr. Graham to discuss the proposed expansion of the facility and replacement of the septic tank system. Staff informed these parties that the proposed development is now deemed a “new” development, subject to the minimum lot size requirements. During the meeting Mr. Lotito was advised to explore the feasibility of a sewer connection to the City of Redlands system or to consider the offset option. Under an offset program, the project proponent can proceed with a development that does not comply with the relevant minimum lot size requirements for commercial/industrial developments if the proponent connects an appropriate number of septic systems to the sewer. The unsewered developments must not otherwise be required to connect to the sewer. During the meeting it was determined that two homes would need to be connected to provide an offset. Implementation of either the sewerage or offset option would allow the project to proceed.

On October 29, 2003, Mr. Lotito advised Board staff that connection to the City of Redlands sewer would cost approximately \$250,000.00. On November 25, 2003, Mr. Lotito revised his plans by eliminating all proposed fixture units for the banquet room. However, as staff advised Mr. Lotito, this is not sufficient to achieve compliance with the minimum lot size requirements. The water usage bills submitted reflect a high current water usage, in excess of that allowed

James Lotito, dba Mill Creek Cattle Company, Mentone - Appeal

pursuant to the MLSRs. On December 8, 2003, Mr. Lotito submitted a request (Attachment "3") for appeal of staff's denial from the MLSR for the proposed banquet room.

It should be noted that Mr. Lotito still has not submitted the required fee (nor the additional information) to the Regional Board as requested on September 2, 2003 for staff oversight of his project. This fee has increased from \$400.00 to \$872.00, retroactive to July 1, 2003. In addition, Mr. Lotito replaced the 750-gallon septic tank with a 3,000-gallon septic system without County or Regional Board approval.

Board staff has advised Mr. Lotito on numerous occasions of the offset option. Mr. Lotito could continue with his proposed banquet room at his property if he connected two septic systems (that would not otherwise be required to be connected to the sewer) to the sewer. To date, Mr. Lotito has declined to pursue this option.

On January 6, 2004, Bob Graham faxed a revised calculation of fixture units at the development. The calculation showed a total fixture count of 66.5 fixture units for the entire development. This fixture unit count is still above the 46 fixture units allowed for the property pursuant to the MLSRs.

Mr. Lotito and Mr. Graham have argued that revision of the proposed banquet room addition to eliminate any new fixture units should be sufficient to address the Regional Board's concerns and to satisfy the minimum lot size requirements. As Board staff have discussed with these parties, this is simply not the case. Replacement of a septic tank (which, in this case, was without requisite prior approval), other than to bring the septic system up to code, is subject to the minimum lot size requirements. Both water usage and fixture unit count already exceed that allowed by the MLSRs. Addition of the banquet room, with or without the additional fixture units, would result in additional wastewater flows, exacerbating existing noncompliance with the flow restrictions imposed by the MLSRs.

RECOMMENDATION:

Deny Mr. Lotito's request for an exemption from the minimum lot size requirements.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
San Bernardino County Department of Environmental Health Services – Mike Farrell
San Bernardino County Department of Building and Safety – Barbara Johnston
Bob Graham – G & G Design
City of Redlands, Herm Sherman



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.*

September 2, 2003

Robert Graham
G & G Design
2889 Ridgeview
Highland, CA 92346

Item No. 10

January 22, 2004

James Lotito, dba Mill Creek Cattle Company, Mentone - Appeal

Attachment "1"

PROPOSED USE OF SUBSURFACE DISPOSAL SYSTEM AT MILL CREEK CATTLE STATION, 1874 MENTONE BOULEVARD, MENTONE, SAN BERNARDINO COUNTY, APN 298-111-21, APN 298-111-18 AND PART OF 19

Dear Mr. Graham:

This letter is a follow-up to the August 25, 2003 meeting with Susan Beeson of my staff regarding the above-referenced project. Currently there exists a restaurant, gift shop and 2 single-family homes that are currently served by onsite septic tank-subsurface disposal systems. You are proposing to construct a 100-seat banquet room (including kitchen and restrooms) on to the existing restaurant. As there is no sewer available to serve the lot, you propose to remove and replace the existing subsurface disposal system(s) with a 3,000-gallon septic system. You propose an additional 29 FU for the banquet room (including kitchen and restrooms). The lot size is approximately 1.15 acres (49,928 sq ft).

The Regional Board has adopted minimum lot size criteria for septic tank-subsurface disposal system use, which are contained in the Water Quality Control Plan (Basin Plan) for the Santa Ana Region. These criteria established a one-half acre minimum lot size requirement for new developments proposing the use of onsite septic tank-subsurface leaching/percolation systems. The minimum lot size requirements (MLSRs) specify that the wastewater flow for each one-half acre of land may not exceed that from a three-bedroom two-bath house as specified in the Uniform Plumbing Code. This is equivalent to approximately 300 gallons (20 fixture units) per one-half acre of land for commercial projects. The maximum permissible wastewater discharge from your proposed site would be approximately 690 gallons per day (equivalent to 46 FU).

Our preliminary review of the information provided for the project show that the project as proposed does not comply with our minimum lot size requirements for the use of septic tank-subsurface leaching/percolation systems due to excessive flows. In order for us to make a final determination, the following information and fee is necessary:

1. The number of fixture units for each existing and proposed structures, the proposed septic tank size(s) and the estimated flows which will result from the project;
2. The number of existing septic tanks onsite if there are any.

California Environmental Protection Agency

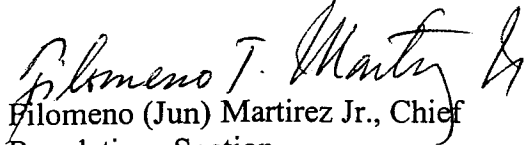


Recycled Paper

3. A County approved soils percolation report;
4. Documentation showing compliance with California Environmental Quality Act (CEQA);
and,
5. Application filing fee of \$400.00.

If you have any questions, please contact Susan Beeson at (909) 782-4902 or me at (909) 782-3258.

Sincerely,


Filomeno (Jun) Martinez Jr., Chief
Regulations Section

cc: San Bernardino County Department of Planning – Tina Twing
San Bernardino County Department of Environmental Health Services – Mike Farrell
San Bernardino County Department of Building and Safety – Barbara Johnston

SKB/mydoc/septic/graham.doc



Mill Creek
Cattle Co

Jim Lotito
389-0706

CITY OF REDLANDS - MUNICIPAL UTILITIES
Please keep this portion for your records.

Service From: 03/24/03

To: 05/19/03

Meter Reading		Water Usage (units)	
Previous	Current	Current	Last Year
6944	7078	134	164
Description of Charges		Charges	
WATER USAGE			115.94
3/4" WATER SERVICE CHARGE			24.20

Billing Date:
05/19/03Due Date:
05/16/03Amount Due:
\$140.14

Account Number: 75909
Service Address: 1884 MENTONE BLVD

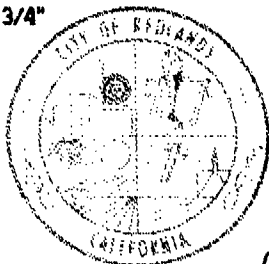
2/05 gal
1/2-1052

CITY OF REDLANDS - MUNICIPAL UTILITIES
Please keep this portion for your records.

Service From: 11/18/02

To: 01/20/03

Meter Reading		Water Usage (units)	
Previous	Current	Current	Last Year
6666	6818	152	134
Description of Charges		Charges	
WATER USAGE			110.50
WATER SERVICE 3/4"			24.00



2702

Billing Date:
01/20/03Due Date:
02/17/03Amount Due:
\$134.50

Account Number: 75909
Service Address: 1884 MENTONE BLVD

CITY OF REDLANDS - MUNICIPAL UTILITIES
Please keep this portion for your records.

Service From: 01/20/03

To: 03/24/03

Meter Reading		Water Usage (units)	
Previous	Current	Current	Last Year
6818	6944	126	146
Description of Charges		Charges	
WATER USAGE			108.66
3/4" WATER SERVICE CHARGE			24.20

2848

Billing Date:
03/24/03Due Date:
04/21/03Amount Due:
\$132.86

Account Number: 75909
Service Address: 1884 MENTONE BLVD

Item No. 10

January 22, 2004

James Lotito, dba Mill Creek Cattle Company, Mentone - Appeal

Attachment "2"

CEC
FTM

2003 DEC 16 PM 2:30

MILL CREEK CATTLE CO.

1874 MENTONE BLVD.
MENTONE, CA. 92359
909-389-0706
FAX- 909-389-7167

*Item No. 10
January 22, 2004
James Lotito, dba Mill Creek Cattle Company, Mentone - Appeal*

December 8, 2003

Attachment "3"

California Regional Water Quality Control Board
Santa Ana Region

3737 Main Street
Suite 500
Riverside, California 9250-3348

Environmental Program Manager (Jun Martinez),

Proposed use of Subsurface Disposal System at Mill Creek Cattle Company, 1874
Mentone Blvd. Mentone, San Bernardino County, APN 298-111-21, APN 298-111-18
and part of 19.

This letter is a notice in writing to appeal your report dated December 2, 2003.

- 1. Your count on fixture units are not correct.**
- 2. We have met all of your requirements.**
- 3. The options available are not there.**

Sincerely,


JAMES LOTITO
MILL CREEK CATTLE CO.

CC. BOB GRAHAM
SUSAN K. BEESON

Merry Christmas



California Regional Water Quality Control Board

Santa Ana Region



Terry Tamminen
Secretary for
Environmental
Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
(909) 782-4130 • Fax (909) 781-6288
<http://www.swrcb.ca.gov/rwqcb8>

Arnold Schwarzenegger
Governor

January 7, 2004

James Lotito
Mill Creek Cattle Company
1874 Mentone Boulevard
Mentone, CA 92359

APPEAL TO THE REGIONAL BOARD FOR AN EXEMPTION FROM THE MINIMUM LOT SIZE REQUIREMENT FOR THE USE OF ONSITE SEPTIC TANK-SUBSURFACE DISPOSAL SYSTEMS AT MILL CREEK CATTLE COMPANY, 1874 MENTONE BOULEVARD, MENTONE, SAN BERNARDINO COUNTY, APN 298-111-21, APN 298-111-18 AND PART OF 19

Dear Mr. Lotito:

This is in response to your request to appeal Regional Board staff's denial of an exemption from the minimum lot size requirement for subsurface disposal system use at the above-referenced site. Your appeal has been scheduled for consideration at the Board's January 22, 2004 meeting at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda. The meeting is scheduled to begin at 9:00 a.m. A copy of the staff report that will be presented to the Board regarding this matter and the agenda announcement for the meeting are enclosed.

During the meeting, you will have an opportunity to present your case to the Board. If you have any questions about the proceedings, please contact Jun Martirez at (909) 782-3258 or Susan Beeson at (909) 782-4902.

Sincerely,

for Filomeno T. Martirez
Joanne E. Schneider
Environmental Program Manager

Enclosures: Staff Report and Agenda Announcement

cc w/enc: State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
San Bernardino County Department of Environmental Health Services – Mike Farrell
San Bernardino County Department of Building and Safety – Barbara Johnston
Bob Graham – G & G Design
City of Redlands, Herm Sherman

SKB/data/lotito-apl-ltr.doc

California Environmental Protection Agency